

9-8-309 Ancient human remains on nonfederal lands that are not state lands.

- (1)
- (a) After April 30, 2007, if a person knows or has reason to know that the person discovered ancient human remains on nonfederal land that is not state land:
 - (i) the person shall:
 - (A) cease activity in the area of the discovery until activity may be resumed in accordance with Subsection (1)(d);
 - (B) notify a local law enforcement agency in accordance with Section 76-9-704; and
 - (C) notify the person who owns or controls the nonfederal land, if that person is different than the person who discovers the ancient human remains; and
 - (ii) the person who owns or controls the nonfederal land shall:
 - (A) require that activity in the area of the discovery cease until activity may be resumed in accordance with Subsection (1)(d); and
 - (B) make a reasonable effort to protect the discovered ancient human remains before activity may be resumed in accordance with Subsection (1)(d).
 - (b)
 - (i) If the local law enforcement agency believes after being notified under this Subsection (1) that a person may have discovered ancient human remains, the local law enforcement agency shall contact the Antiquities Section.
 - (ii) The Antiquities Section shall:
 - (A) within two business days of the day on which the Antiquities Section is notified by local law enforcement, notify the landowner that the Antiquities Section may excavate and retrieve the human remains with the landowner's permission; and
 - (B) if the landowner gives the landowner's permission, excavate the human remains by no later than:
 - (I) five business days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1); or
 - (II) if extraordinary circumstances exist as provided in Subsection (1)(c), within the time period designated by the director not to exceed 30 days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1).
 - (c)
 - (i) The director may grant the Antiquities Section an extension of time for excavation and retrieval of ancient human remains not to exceed 30 days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1), if the director determines that extraordinary circumstances exist on the basis of objective criteria such as:
 - (A) the unusual scope of the ancient human remains;
 - (B) the complexity or difficulty of excavation or retrieval of the ancient human remains; or
 - (C) the landowner's concerns related to the excavation or retrieval of the ancient human remains.
 - (ii) If the landowner objects to the time period designated by the director, the landowner may appeal the decision to the executive director of the department in writing.
 - (iii) If the executive director receives an appeal from the landowner under this Subsection (1)(c), the executive director shall:
 - (A) decide on the appeal within two business days; and
 - (B)
 - (I) uphold the decision of the director; or

- (II) designate a shorter time period than the director designated for the excavation and retrieval of the ancient human remains.
- (iv) An appeal under this Subsection (1)(c) may not be the cause for the delay of the excavation and retrieval of the ancient human remains.
- (v) A decision and appeal under this Subsection (1)(c) is exempt from Title 63G, Chapter 4, Administrative Procedures Act.
- (d) A person that owns or controls nonfederal land that is not state land may engage in or permit others to engage in activities in the area of the discovery without violating this part or Section 76-9-704 if once notified of the discovery of ancient human remains on the nonfederal land, the person:
 - (i) consents to the Antiquities Section excavating and retrieving the ancient human remains; and
 - (ii) engages in or permits others to engage in activities in the area of the discovery only after:
 - (A) the day on which the Antiquities Section removes the ancient human remains from the nonfederal land; or
 - (B) the time period described in Subsection (1)(b)(ii)(B).
- (2) A person that owns or controls nonfederal land that is not state land may not be required to pay any costs incurred by the state associated with the ancient human remains, including costs associated with the costs of the:
 - (a) discovery of ancient human remains;
 - (b) excavation or retrieval of ancient human remains; or
 - (c) determination of ownership or disposition of ancient human remains.
- (3) For nonfederal land that is not state land, nothing in this section limits or prohibits the Antiquities Section and a person who owns or controls the nonfederal land from entering into an agreement addressing the ancient human remains that allows for different terms than those provided in this section.
- (4) The ownership and control of ancient human remains that are the ancient human remains of a Native American shall be determined in accordance with Chapter 9, Part 4, Native American Grave Protection and Repatriation Act:
 - (a) if the ancient human remains are in possession of the state;
 - (b) if the ancient human remains are not known to have been discovered on lands owned, controlled, or held in trust by the federal government; and
 - (c) regardless of when the ancient human remains are discovered.
- (5) This section:
 - (a) does not apply to ancient human remains that are subject to the provisions and procedures of:
 - (i) federal law; or
 - (ii) Part 4, Historic Sites; and
 - (b) does not modify any property rights of a person that owns or controls nonfederal land except as to the ownership of the ancient human remains.
- (6) The division, Antiquities Section, or Division of Indian Affairs may not make rules that impose any requirement on a person who discovers ancient human remains or who owns or controls nonfederal land that is not state land on which ancient human remains are discovered that is not expressly provided for in this section.

Amended by Chapter 382, 2008 General Session